

Jharkhand State Electricity Regulatory Commission

Ranchi

Form of Proceedings

Case No. 04 of 2018

Jharkhand Bijli Vitran Nigam Limited Petitioner
Versus
Inland Power Limited (IPL) Respondent

For the petitioner : Mr. Naveen Kumar, Mr. Amit Sinha and Mr. Amitabh
Advocates
For the Respondent : Mr M.L. Khetan, representative of the petitioner

Sl.No	Date of Proceeding	Proceeding of the Commission with signature	Office action taken with date
1	2	3	4
05	18.07.2018	<p>The petitioner, Jharkhand Bijli Vitran Nigam Limited (JBVNL), has filed a petition on 07.03.2018 praying therein to accord approval of Power Purchase Agreement signed on 23rd Feb, 2012 with Inland Power Limited for purchase of 35 MW Power and Supplementary Power Purchase Agreement signed on 22nd April, 2013 for purchase of entire quantity of Power to be generated from the 1st unit of 63 MW.</p> <p>2. Under Section 86(1) (b) of the Electricity Act, 2003 the State Commission has the responsibility to regulate the electricity purchase and procurement process of distribution licensees. Section 86(1) (b) of Electricity Act, 2003 runs as under:-</p> <p>Section 86 Function of State Commission: - (1) <i>The state Commission shall discharge the following functions, namely:-</i> <i>(a).....</i> <i>(b) regulate electricity purchase and procurement process of distribution licensees including the price</i></p>	

		<p><i>at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the state;</i></p> <p>3. Various judgments have been pronounced by the Hon'ble Supreme Court and Hon'ble APTEL in which it has been held that the State Commission has the authority to approve the PPA signed between the Generating Company and the Distribution Licensee. In this regard Hon'ble APTEL vide order dated 10th July, 2013 in Appeal No. 112 of 2012 ruled in Para 95 (i) as follows:-</p> <p><i>i) The amended PPA dated 25.08.2004 should have been placed before the State Commission by the Electricity Board for obtaining approval of the state Commission in terms of Section 86(1)(b) of the Electricity Act,2003. Admittedly, the PPA was never placed for approval of the state Commission, the PPA does not become a legally enforceable and binding document before the parties and if there is some conflict between the terms of the unapproved PPA and the provisions of the Act, Rules and Regulations, it is the provisions of the Act, Rules & Regulations which would hold the field and not the terms of the PPA.</i></p> <p>Also, Hon'ble APTEL vide order dated 13.01.2011 in Appeal No. 70 of 2009 in Para 16 ruled as under:-</p> <p><i>16. From the above observations, it is clear that the scope of approval under Section 86(1)(b) of the Act includes the power to reject, modify, alter or vary the terms of the agreements of purchase of power and to further direct the distribution licensee to re-write the terms found reasonable by the state Commission.</i></p> <p><i>Several other judgement also make it clear that u/s 86(1)(b), the distribution licensee is obligated to get the PPA signed by it, to get it approved by the Commission.</i></p>	
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submitted by the Petitioner JBVNL.

12. Further, the JBVNL was asked to amend the clause of the supplementary PPA under SHAKTI scheme to the effect that *“All terms and conditions of Principal PPA dated 23.2.2012, supplementary PPA dated 22.4.2013 and this PPA dated 13.2.2018, are subject to examination and approval by the Commission”* and to send the draft amended PPA under SHAKTI scheme to the Commission for approval. But it is seen that JBVNL has not sent the same to the Commission for approval.

13. As per the direction of Hon'ble High Court dated 27.06.2018 that this Commission may pass the final order in respect of PPA under SHAKTI Scheme after the response of the Petitioner JBVNL, we pass the following orders:-

ORDER

(a) The PPA dated 23.02.2012 and PPA dated 22.04.2013 for procurement of Power by JBVNL are under examination and process of approval by this Commission would continue.

(b) The issue regarding approval of PPA dated 13.02.2018 under SHAKTI Scheme to allow 1 (one) paisa discount is approved subject to obtaining the clarifications by the Petitioner JBVNL from Ministry of Power and/or Ministry of Coal regarding the eligibility of IPL in participating the bid as required in Scheme Document for Auction of Coal Linkages to IPPs having already concluded long terms PPAs.

		<p>In the light of the above observations, the petition in respect of PPA dated 13.2.2018 under SHAKTI scheme is disposed off.</p>	
		<p>Sd/- (R.N. Singh) Member (Engg)</p>	<p>Sd/- (Arbind Prasad) Chairperson</p>